

On August 22 senior leadership and key staff of the State of Oregon and EPA Region 10 and EPA Headquarters with responsibility for overseeing the Portland Harbor Superfund site met to discuss how to establish sufficient certainty of implementation of the Record of Decision for the site that is anticipated to be completed in the near future.

The major results of the meeting are summarized below.

The group affirmed that there are significant shared interests in implementing the ROD as quickly, effectively and efficiently as possible. These interests include getting the human health and environmental benefits of the ROD as soon as possible; avoiding the lost opportunity costs of not being able to use/develop the river and its adjacent uplands for the benefit of the Oregon economy; and providing certainty to the Responsible Parties that the ROD establishes sufficient clarity about cleanup responsibilities to enable implementation to proceed and thus minimize or avoid protracted negotiations, enforcement and/or litigation prior to commencing cleanup. If these interests can be addressed in the coming months, the State and EPA will be able to send a clear joint message to all concerned that there is a shared commitment to begin implementation as soon as the ROD is issued.

The primary reason that EPA and ODEQ want to establish a strong collaborative partnership in performing the necessary governmental oversight activities associated with implementing the ROD in a timely manner is that the size, scope, complexity and urgency of the cleanup will require deployment of each agency's resources and capability in order to move the cleanup forward quickly and effectively to benefit the river's health and to reduce excessive exposures. Working together to accomplish this is the wise, prudent and efficient way to accomplish this goal and will provide cost savings for both agencies and the responsible parties.

To guide development of the framework on how this working relationship should be established and operated, the group identified and agreed to the following principles:

1. All work done to implement the ROD would be conducted under CERCLA legal authority. As such, all appropriate interim and final cleanup decisions will have to be approved by EPA, and any disputes/differences between EPA and DEQ would have EPA as the final decision-maker. Since DOJ is the only federal agency who can grant releases of liability under federal law, DOJ's buy-in to the implementation framework being developed for this Site is required.
2. The overall Superfund site could be split up into smaller sub-site work areas (aka 'hotspots') in order to encourage relevant responsible parties to move forward in separate work areas. There are criteria that can be used to divide up the site, including the urgency of the health risks, complexity of the technical and engineering requirements of the cleanup, the location of the work area and any potential recontamination risks it might create, the likelihood/willingness/number of responsible parties to come forward early, etc. Hence, splitting the site up involves both technical and PRP 'willingness' aspects.

3. As the site is divided into sub-site work areas, release of federal liability for work performed will be given to performing parties at a particular work area upon successful cleanup of the contamination at that work area. Full release of all federal liability for any performing party at a work area for the whole Site must await completion of the whole ROD. (Applicable state laws regarding liability release may be integrated into these decisions as appropriate.)
4. EPA and DEQ want to share the technical governmental oversight at sub-site work areas in order to enable cleanup to occur more quickly and to more effectively and efficiently deploy their resources devoted to implementation. Work performed at work areas for which DEQ provides the technical governmental oversight would require EPA approval regarding successful implementation of the ROD for the work area in question.
5. In order to successfully share technical governmental oversight of work area implementation between EPA and DEQ, EPA and DEQ would perform oversight in a substantially similar manner associated with application of decision trees on technical issues and performance outcomes in accordance with the ROD, the NCP, and EPA guidance and other applicable legal requirements such as those under ESA and NHPA, etc.
6. EPA and DEQ share the objective that dividing up the site and sharing technical governmental oversight responsibilities not adversely affect the allocation process of liability that the PRPs are conducting.
7. Tribal partners will retain their existing and historic connection with EPA thru EPA's trust responsibilities and tribal treaty rights. Tribes will continue to have government-to-government consultations with EPA in work areas that DEQ is providing the technical governmental oversight of implementation. At those areas, DEQ will engage tribes as partners and work with EPA to help EPA effectuate EPA's tribal responsibilities.
8. Continued engagement of federal and tribal partners is critical to the success of implementation of ROD. Upon release of the ROD, EPA will engage federal and tribal entities to revise the existing Portland Harbor RI/FS MOA and renew agreements on participation during RD/RA activities.

The group then discussed several key issues that will also shape how the framework of the working relationship between EPA and ODEQ on implementation of the ROD would be developed. These include:

1. EPA and ODEQ will need to establish a strong interagency team approach to ensure consistency across work areas, joint learning on technical problem-solving, mutual understanding of data, technical and legal issues shared across work areas, etc. In order for such close cooperation and coordination to occur, EPA and DEQ will need to do significant resource planning and skill allocation over an extensive period of time to ensure that implementation will occur as anticipated. Various ways to accomplish this were discussed, including the possibility of sharing personnel across agency lines through IPAs or other appropriate mechanisms.

2. State leadership in engaging and encouraging PRPs to come forward quickly and agree to begin implementation at the work areas for which they are primarily or fully responsible will greatly enhance the possibility of successful early implementation. Significant responsibility for timely implementation of the ROD rests initially with the Responsible Parties. How quickly they embrace their responsibility to act under the ROD, and not wait for EPA enforcement action will be crucial in getting the RD/RA going quickly.
3. There is strong interest by the PRPs for additional sampling at the site to occur next summer. The State and EPA believe that the sampling to date is sufficient to establish the ROD and that implementation can begin prior to the allocation process being completed. As well, sampling can in most instances be accomplished as part of the normal process of Remedial Design/Remedial Action. The agencies are eager to engage the PRPs about the nature and extent and purpose of additional sampling as part of beginning early implementation of the ROD and believe that implementation thru RD/RA can begin in many work areas as sampling is conducted.
4. How to actually split up the site, especially in light of PRP willingness which cannot be explicitly ascertained until the ROD is issued, was discussed. How many work areas and which work areas could potentially be combined into a single consent decree or order was discussed but potential scenarios of site break-up were not.
5. The agencies discussed what a preferred way of managing the 'rest of the site' cleanup (i.e., the 85% of the river not in the identified sub-site work areas), including monitoring the recovery of that area and performing such site-wide responsibilities for data management, five-year reviews, etc. The concept of a Trust to accomplish these responsibilities is being explored by both EPA and the State. A Trust, if properly constructed, funded and operated, may offer significant advantages in accomplishing responsibilities that otherwise would be spread across most if not all of the PRPs. Who can establish a Trust, who could manage it, who would be the beneficiary, and how it would be funded over time by whom all need further research. As well, how to engage the PRP's, whose agreement on the concept of a Trust is critical for moving forward on establishing one, has yet to be determined.
6. How might a broader program of habitat protection, water quality improvement and toxic control that extends up the River from the Portland Harbor Superfund site and down toward into the Columbia River to complement and support implementing the ROD was discussed. The 11 mile stretch of the Willamette River covered by the Portland Harbor Superfund site is only one component of a complex watershed system that eventually drains into the Columbia River. What such an effort entails, how much of it is currently operational and what additional elements might be launched concurrent with implementation of the ROD still need to be determined. Issues such as additional monitoring to understand the nature and extent of pollutant loadings and identification of probable sites that are still polluting the river are likely areas of inquiry. The "upriver reach" is one possible place where additional investigation and remedial action could contribute to enhancing river recovery along with implementation of the ROD.

7. Enabling ODEQ to conduct the technical governmental oversight at selected work areas means establishing a common understanding of how using the decision trees and achieving performance measures in the ROD, following the legally required actions that must be performed by the PRPs under ODEQ oversight and then approved by EPA will occur. Of particular importance is ensuring that EPA oversight of DEQ's actions/decisions will be performed in an efficient and effective manner. How to conduct EPA's oversight of ODEQ was discussed but this needs further fleshing out to become part of the framework regarding implementation of the ROD. (Current source control relationships between EPA and DEQ may provide a template here, however this does not entail federal release of liability for the uplands work. As well, given the ongoing work on source control and its importance in contributing to a successful long-term river cleanup, how to include source control responsibilities and performance into the implementation framework is needed.)